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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,507	08/29/2003	Merrick Wetzler	02581-P0518B	2201

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ST. ONGE STEWARD JOHNSTON & REENS, LLC  
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EXAMINER
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SWIGER III, JAMES L

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/652,507	<b>Applicant(s)</b> WETZLER ET AL.	
	<b>Examiner</b> James L. Swiger	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                                        |                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/14/04; 12/22/03</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9-11, and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behrens (US 5,334,192) in view of Serbousek et al. (US 6,066,142). Behrens discloses a surgical guide device comprising a handle (9), a plurality of sleeve channels (10-13), wherein each has its own axis as shown in Figure 1, and where at least two are non-parallel with respect to each other (Col. 3, line 57). The arm has one end that is fixedly connected to a handle (9), and the other end that is attached to a bone as shown in Fig. 3. Further, Behrens discloses at least one sleeve (24) that receives a drilling member (28), and is capable of being inserted into any channel (10-13). The angle of the sleeve (24), is variable with respect to the handle as shown in Fig. 3. Further, the drilling member (28), is disposed within the drill sleeve (24). (See Col. 2, lines 28-29). Behrens also discloses that a drilling member may be a K-wire (Col. 3, lines 15-25). Also, the second end of the arm contains a hook (4), and wherein the second end of the said arm (8) has an aperture (27) to receive the drilling member (28), again shown in Fig. 3.

Behrens discloses the claimed invention except for a locking mechanism with a plurality of ridges, that inhibits at least one sleeve from being longitudinally moveable, a

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wall member with a plurality of apertures, an actuator for moving the locking mechanism, a push button, or a spring. Serbousek et al. disclose the items immediately *supra* including a locking mechanism (318, as a lock bar), with a plurality of ridges (396), an actuator (324, as a locking body), a plurality of apertures (80) that are capable of locking, or securing a sleeve in place, a push button (352), and a spring (356). The various components related to the locking mechanism provide the surgeon with an enhanced set of options for drilling into bone, and thus provide a secure method for the drill to align to a drilling site with respect to an at least secured, even extended drill guide (see Col. 1, lines 6-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Behrens having at least the components related to the locking mechanism as listed *supra*, in view of Serbousek et al. to better secure the drill guide in use and providing secured drill options for the surgeon.

Claims 20-22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behrens in view of Herzenberg et al. (US 5,403,322). Behrens discloses the claimed invention except for a threaded sleeve, and where a sleeve can be simultaneously disposed in a plurality of channels. Herzenberg et al. discloses a drill guide that has a sleeve (46) that has threads (47) that correlate with internal threads (44/45) or holes (42/43) in order to lock the sleeve relative to the handle to inhibit movement (Col. 8, line 3). Herzenberg et al. further discloses a kit that has a plurality of drill sleeves (Col. 7, line 25), which can therefore be simultaneously disposed in the channels 24a. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to construct the device of Behrens et al. having at least threaded sleeves and simultaneously disposed channels in view of Herzenberg et al. to allow for improved drill/device interfacing.

***Allowable Subject Matter***

Claims 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

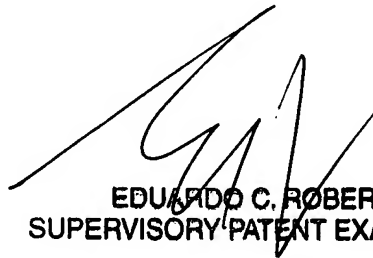
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLS

 5/15/06

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER